

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15831 of the Methodist Home for the District of Columbia, pursuant to 11 DCMR 3108.1, for a special exception under Sections 218 and 219 to allow an addition to a community residential facility and health care facility in an R-1-A and R-5-D District at premises 4901 Connecticut Avenue, N.W. (Square 2033, Lot 16).

HEARING DATES: July 21 and September 22, 1993

DECISION DATES: October 6 and 14, 1993

DISPOSITION: By Order dated May 17, 1994, the Board **GRANTED** the application by a vote of 2-1 (Carrie L. Thornhill and Paula L. Jewell to grant; Sheri M. Pruitt to grant by absentee vote; Angel F. Clarens opposed to the motion).

By Order dated September 26, 1994, the Board **DENIED** the opponent's motion for reconsideration by a vote of 5-0 (Maybelle Taylor Bennett, Susan Morgan Hinton, Laura M. Richards and Angel F. Clarens to deny; Craig Ellis to deny by absentee vote).

By Order dated June 30, 1997, the Board **AMENDED** the original order and **AFFIRMED** its decision on **REMAND** by a vote of 3-0 (Susan Morgan Hinton, Angel F. Clarens and Laura M. Richards to adopt the proposed order, with amendments; Maybelle Taylor Bennett not present, not voting; Sheila Cross Reid not voting, not having heard the case).

MODIFICATION ORDER

The application was granted by the Board's final order dated May 27, 1994. The Board denied the opponent's motion for reconsideration by Order dated September 26, 1994. The decision of the Board was appealed and the Court of Appeals remanded the case back to the Board for clarification of the order. Upon remand, the Board amended the original order and affirmed its decision to grant the application.

By letter dated January 16, 1995, counsel for The Methodist Home (the "Home"), movant herein, requested a waiver of the six month filing requirement (Subsection 3335.3) for the filing of a request for the modification of approved plans. With regard to the waiver request, the movant noted that The Methodist Home has been involved in lengthy litigation over this property and that all parties have made diligent efforts to settle the dispute since the issuance of the Board's final Order on June 30, 1997. Finally, the movant noted that the waiver would only extend the six-month period by 16 days. The movant argued that a waiver of the six-month time period is wholly appropriate given the history of this application.

The Board notes that no other statements were submitted into the record related to the waiver request. Therefore, upon consideration of the request and the basis upon which it was requested, the Board granted the waiver of its Rules to allow for the filing of the motion after the six-month period.

In the substantive motion filed before the Board, the Home requests that the Board approve the following: (1) alternate plans for the site and (2) modified conditions to the final order

Pursuant to 11 DCMR Subsection 3335.7, the Board may approve such requests where the modifications are minor and do not change the material facts relied upon by the Board in approving the application.

The Alternate Plans

The Home maintains that the alternate plans involve no change to the areas of relief associated with the original application; that is, special exception approval under Sections 218 and 219 to allow the expansion of an existing healthcare facility and community residence facility. All changes to the originally approved plans were designed to address specific community concerns. Many aspects of the plans remain unchanged. The Home argued that all changes that were made strengthen the reasons supporting the Board's original approval. For instance:

- portions of the façade have been redesigned and achieve a more residential appearance;
- setbacks from the houses along the Home's eastern boundary have been increased;
- the total project square footage has been decreased;
- landscaping has been increased along the property's northern boundary; and
- a brick wall has been added along the Home's eastern boundary.

As further evidence of the minor nature of the changes, the Home provided the following table which summarizes the major features of the Alternate Plans as compared to the original drawings.

Project Calculations	Original Plans	Alternate Plans
Height:	27'7"	29'10"
Lot Occupancy:	27.99%	28.7%
FAR:	.622	.620
Parking Spaces	48 spaces	48 spaces
Side Yard	32'	32'
Rear Yard	46'	46'

The Home stated that while the rear yard appears not to have changed, the building addition has been moved back an additional 45 feet 8 inches from the eastern property line for a total setback to the new addition of 95 feet at the one-story enclosed building link, and 102 feet at the two-story healthcare addition.

The Home noted that all parties, including the opponents, agreed upon the alternate plans.

The Modified Conditions

With regard to the conditions related to the site, the Home stated that it has reached a settlement with the neighbors who previously opposed the expansion. The Home noted that an agreement has been reached which includes the alternate plans discussed above and modified conditions to the Board's order. The movant stated that the modified conditions accomplish several objectives including a tightening of controls on construction activities on the site. In describing the process used to conduct the negotiations, the Home stated that the Settlement Agreement and Revised Conditions to BZA Order No. 15831 were distributed to all abutting and nearby property owners on December 17, 1997. A final meeting was held on January 8, 1998 to address any questions. At that meeting, all attendees signed the final page of the Settlement Agreement to evidence their support of the Alternate Plans and Revised Conditions to the

BZA Order. The movant stated that there is no known opposition to the Alternate Plans or Conditions and there is complete support for the Board to approve the request as a modification of approved plans without a hearing. The movant maintained that a hearing is not necessary because all parties to the original proceeding support the alternate plans and numbers other neighbors have indicated their support by signing the Settlement Agreement. Based on the circumstances stated above, the movant requested that the motion for modification of the plans and conditions be approved.

The agreement and modified conditions were submitted into the record as part of the request. No other statements in support of or in opposition to the motion were received from other parties to the application.

Upon consideration of the motion, the alternate plans, the modified conditions and the settlement agreement, the Board concludes that the motion for modification meets the requirements of Subsection 3335.7. It is the Board's view that alternate plans and modified conditions are minor and do not materially change the facts relied upon by the Board in granting the application. The Board further concludes that the proposed changes are unopposed by parties to the application.

Accordingly, the Board hereby **ORDERS** that the six-month filing requirement be **WAIVED** and that the **MOTION** for **MODIFICATION OF PLANS AND CONDITIONS** be **APPROVED**; **SUBJECT** to the following **CONDITIONS**:

1. Construction shall be in accordance with the alternate plans marked as Exhibit No. 162 of the record.
2. The Methodist Home shall comply with the modified conditions agreed upon in negotiations with the parties to the application and supported by the neighbors. These conditions are enumerated in the record at Exhibit No. 161 (at exhibit L) and were adopted by the Board in approving this motion. These adopted modified conditions serve to replace the conditions imposed by the Board in previous orders and they appear below:

I. Advisory Committee

A. The Home shall establish an Advisory Committee (the "Advisory Committee") to include representatives of the community surrounding the Home.

1. The Advisory Committee shall consist of six (6) members:

(a) two (2) representatives of the owners of the property in the 3400 block of Fessenden Street which, for purposes of this section, includes the following addresses 3319 and 3403-3419 Fessenden Street, N.W., and 5000 34th Street, N.W. The representatives will be elected by the property owners listed in this section (a) with one vote for each address. The position for the second representative may be filled with a member of Advisory Neighborhood Commission 3F;

(b) one (1) representative of the owners of property adjacent to the eastern boundary of the Home's property including the following addresses 3318 Fessenden Street and 3239 and 3245 Ellicott Street, N.W. The representative will be elected by the property owners listed in this section (b) with one vote per address;

(c) two (2) representatives of the Home's Board of Trustees; and

(d) the Home's Chief Executive Officer, who will Chair the Committee.

2. The Home's Project Manager shall not be a member of the Advisory Committee, however he will participate in the Advisory Committee meetings during the construction process. The Project Manager shall cease participation in the Advisory Committee when the Home receives a certificate of occupancy for the expansion.

B. The Advisory Committee shall meet on a regular basis to be determined by the Advisory Committee to discuss and make recommendations concerning construction operations and the operations of the Home as they impact the community. The meetings shall be open to all property owners listed in Sections A.1.(a) and (b) above and all such owners shall be sent notice of the meetings. The Advisory Committee shall meet regularly (at least monthly) during the construction phase of the Project to address construction-related issues and, thereafter, no fewer than three (3) times each year unless otherwise agreed to by the Committee.

C. The Home shall use its best efforts to address all matters of reasonable concern to the Advisory Committee.

D. Except in the case of any emergency involving immediate danger to life or property, any aggrieved neighbor shall provide written notice to the Home, with a copy to the Advisory Committee, of any alleged violation of this BZA Order or the Building Code or any municipal laws or regulations at least ten (10) working days prior to notifying the Department of Consumer and Regulatory Affairs of the alleged violation in order to provide an opportunity for the Home to address the alleged violation.

II. Landscaping

A. The landscape plan that shall be implemented by the Home, which includes a list of specific plant, tree and shrub types and their sizes, is identified in the Alternate Plans (Exhibit No. 162).

B. The Home shall make every effort to maintain all landscaping on its property in a healthy and growing condition. The Home shall replace any vegetation that is planted in connection with the landscape plan but fails to survive, within two (2) months of the death of such vegetation, as long as weather conditions and sound horticultural practice permit a replanting within such time frame. If a change or substitution to the landscape plan is required in order to address site or other conditions, including plant unavailability, the Advisory Committee shall be consulted about such a change. The Home does not agree to replace any vegetation that dies as a result of the installation of the fence along the eastern boundary of its property, unless any vegetation dies as a result of the negligence or misconduct of those involved with the construction of such fence. The Home and the community members recognize that the construction of the fence in accordance with sound building practices and without negligence or misconduct on the part of any construction workers may result in the loss of vegetation.

C. If feasible, the large spruce tree near the Fessenden Street driveway of the Home shall be relocated to another location on the Home's property such that it will afford similar screening of The Home from the same houses that are currently screened by the tree. If it is not feasible to relocate the existing tree, it shall be replaced with another spruce tree of a minimum height of 12 feet.

D. Prior to the start of construction, a wall or fence at least six feet (6') high and in a style set forth in Exhibit No. 162 shall be constructed along the existing fence line on the east side of the Home's property. The Home shall be responsible for the routine maintenance of the fence.

E. The landscaping along the 3400 block of Fessenden Street and the Home's eastern boundary adjacent to the residence at 3218 Fessenden Street shall be installed immediately following site clearing and grading or as soon thereafter as weather permits.

III. Loading Dock

A. The Home shall locate its loading dock as shown on the Alternate Plans (Exhibit 162). The loading dock shall have roll-up doors that will be kept closed at all times except when the loading dock is being used for deliveries or trash pick-up.

B. The Home's loading, trash pick-up, and deliveries shall be accomplished inside the loading dock except that the actual emptying of the refuse receptacles by the refuse collection company may occur immediately outside the building. The Home shall not cause or permit any trash or other storage outside the loading dock.

C. The interior of the loading dock area and the interior walls leading to the loading area shall be treated with acoustical material to reduce the sound associated with the loading dock. The Home shall maintain the acoustical material at all times in order to reduce the sound associated with the loading dock. Prior to installing the acoustical material referenced herein, the residents of 3239, 3245 and 3318 Ellicott Street shall be provided with an opportunity to meet with an acoustical expert, at the Home's expense, to discuss the anticipated noise reduction that may result from the installation of the acoustical material and other possible methods to reduce the noise. Such methods may include the installation of a loading dock door that is designed to minimize the noise associated with the door's operation. The Home shall take reasonable steps to incorporate reasonable suggestions from the sound engineer.

IV. HVAC and Cooling Tower

A. The Home shall locate its central heating, ventilation and air conditioning (HVAC) equipment within the building. This equipment shall be within the building and will have sufficient noise insulation so that sound from the Home's central HVAC equipment will not be heard beyond the Home's property.

B. The Home shall screen its proposed outside condensing unit or cooling tower from view and will acoustically baffle it in order to reduce noise levels at the property lines to comply with all applicable limits set forth in D.C. regulations, as may be amended from time to time, for noise in a residential neighborhood.

V. Noise

The Home shall operate its facility so as to comply in all its activities (including the operation of any mechanical equipment) with the general noise limits in the D.C. Noise Control Act, as may be amended from time to time, for noise made or audible in residential districts.

VI. Lighting

All site lighting shall be mounted and directed downward and inward to the facility from the perimeter of the site. The Home shall not permit any lighting fixtures on its premises, including those in the vicinity of the driveway off of Elliott Street, N.W. to be directed into the neighborhood. Samples of proposed outside lighting fixtures shall be presented to the Advisory Committee for review and comment prior to their installation.

VII. Rodent Control

The Home shall control rodents on its site in part by keeping trash and garbage within the loading area. The Home shall continue to employ a competent and licensed exterminator to service the Home's site on a regular basis to prevent rodent or similar problems from developing at the site. In addition to its regular service, such exterminator shall make weekly site inspections during excavation and foundation work on site and provide services to eradicate any rodent problems aggravated by such work.

VIII. Operational Features of the Home

A. Entrance: The principal entrances to the Home shall be on the Connecticut Avenue (west) side of the facility. One entrance is the existing main entrance and the other entrance is the new entrance proposed for the healthcare center. All other entrances to the facility shall be closed from 4 p.m. - 7 a.m. although they will be available for emergency access or for employee access through the use of a card key or other controlled access system.

B. Rear (East) Driveway: The Home shall install two gates on its driveway along the east side of its property. One gate shall be just beyond the loading dock, and the second shall be at the Ellicott Street end of its driveway, as indicated on Exhibit No. 162. These gates shall be operated by a key, keycard or similar device which shall be issued only to staff and residents of the Home, so that access through the gates will be restricted to such persons. The traffic through these gates shall be egress only, except in cases of fire or other similar emergency. The driveway shall be no more than 14 feet in width at its intersection with Ellicott Street, N.W.

C. Visiting Hours: The visiting hours for the Health Care Center shall be from 8 a.m. - 8 p.m. daily, as required by D.C. law.

IX. Maintenance of D.C. Public Space and the National Park Service Parcel at Western End of the Home's Site

The Home agrees to work with the District of Columbia Government ("D.C. DPW") and the National Park Service to implement a plan to remove trash, debris and dead or undesirable vegetation from the portion of the public space and adjacent National Park Service parcel.

The plan to be presented to the National Park Service and D.C. DPW is as follows:

A. A strip of land -- several feet wide -- immediately adjacent to the Fessenden Street curb line shall be cut to the ground and maintained as grass, ground cover or some other living erosion-resistant material.

B. In implementing the plan, the Home shall retain a visual barrier between the Fessenden Street houses and the Home's property as set forth in the Alternative Plan's landscape plan, Exhibit No. 162.

C. The area bordering the new driveway along the northwest property boundary shall be planted with trees or shrubs so that, upon maturity, a green buffer will exist all year around.

D. If the National Park Service and D.C. DPW do not maintain their respective portions of the area, the Home shall maintain the area in good order just as it maintains all of its property to the extent permitted by law.

E. This plan may be subject to the approval of the D.C. DPW and the National Park Service since it affects publicly owned property. The Home shall use its best efforts to obtain approval of this plan, if such approval is necessary.

F. Any such approval is not a condition precedent to this Agreement or the commencement of construction. In the event that modifications are required, the Home shall seek input and advice from the Advisory Committee.

X. Vendor Deliveries

The Home shall not allow deliveries by vendors or trash pick-up prior to 7 a.m., or such later time as required by any future D.C. regulations. The Home will continue to maintain regular contact with the vendors and the refuse collection company to enforce this restriction.

XI. Construction Activities

A. Hours for Construction: During the construction phase, the Home shall limit the hours of construction to 7 a.m. to 5 p.m., Monday through Friday for excavation, foundation, and exterior construction. After the project is sealed from the elements, interior construction may take place between the hours of 7 a.m. and 5 p.m., Monday through Friday and 8 a.m. to 5 p.m. on Saturday except in the event of an emergency. The Home shall not cause or permit any construction work at its site on Sundays except in the case of an emergency which could cause damage to the site or present a hazard for the community.

B. Waste: The Home shall locate any equipment, materials and receptacles for construction waste and portable toilets on the Home's property, not on any public space. No such equipment, materials or receptacles shall be located within thirty-five (35) feet of the Home's eastern property line. All receptacles for construction waste shall be screened by enclosures consisting of a minimum height of six (6) feet and be placed on gravel or soil pads to reduce the noise attributable to the movement or emptying of the receptacles. The Home shall locate any portable toilets used by the Home or its contractors or agents behind any existing landscaping, walls or portions of the building and shall screen them from the view of neighboring property owners and passerby. Screening provided by the fence described in Section II, D above shall not be deemed to be screening as that term is used in this section.

C. Construction Fence: An opaque fence with a height of 6 feet shall be installed along the Home's northern property line facing the 3400 block of Fessenden Street and along a portion of the Home's eastern property line adjacent to the residence at 3218 Fessenden Street, N.W. The fence shall begin at a point on the Home's property that is directly across from the house located at 3411 Fessenden Street and will continue to the Home's eastern boundary and proceed in a southern direction six feet along that boundary.

D. Parking: The Home shall use its best efforts to provide off-street parking for construction workers.

E. Security: The Home, in consultation with the Advisory Committee, shall present and implement a security plan for the Home, the construction property, and the neighborhood during construction period. Such security plan may include the use of security guards, fencing, temporary lighting, or other means to reduce the likelihood of activity on the construction site or in the neighborhood as a result of the construction after on-site work hours.

XII. Parking

A. The Home shall provide forty-eight (48) marked parking spaces at the Home.

B. The Home shall plant and maintain on its property screening of these forty-eight (48) parking spaces from neighborhood view with adequate trees, shrubs, fencing and grading (as provided in the Home's Alternate Plans).

C. In order to address commuter parking problems that are unrelated to the Home and its operation, the Home shall continue to support the residentially-restricted parking on the south side of Fessenden Street between 34th and 36th Streets, N.W. and along both sides of the 3200 block of Ellicott Street.

XIII. Additional Construction

A. The Home shall discuss any need for new construction prior to January 1, 2010 as soon as practicable after events create a need for new construction, as determined by the Home. The Home shall present potential plans for any proposed changes or additions to the Advisory Committee for its review and comment a minimum of eight (8) months before the Home's filing of such plans with the Office of the Zoning Administrator to initiate the Board of Zoning Adjustment review process.

B. The Home may process plans for any federally or locally-mandated improvements to the building or for the construction of any portion of the building that is lost through a casualty without the review by the Advisory Committee eight (8) months in advance, as required by Section XIII,A, above. The Home shall advise the Advisory Committee of any such improvements or construction plans as soon as practicable after the need for such improvements or construction is known to the Home.

XIV. Bus Parking

A. The Home shall not cause or permit any buses to be parked on its property except that on no more than two weekends per year one visitor bus shall be allowed to park on the site for a period not to exceed 72 hours. The bus must park in the spaces that are closest to the Home's two main entrances.

B. Minivans, caravans or similar vehicles owned by the Home shall be parked in the parking spaces closest to the Home's main entrances. Such vehicles shall not be parked on neighborhood streets.

XV. Photographic Survey

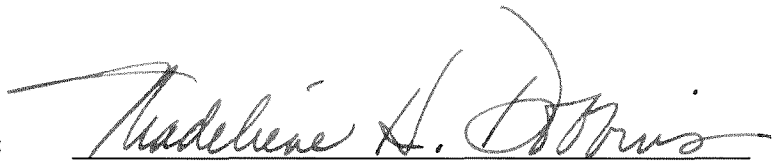
Any owner of property listed in Sections I.A.1(a) and (b) is entitled to a photographic survey of his or her house for purposes of evaluating the condition of the house prior to the start of construction. The cost of such surveys shall be borne by the Home.

DECISION DATE: February 4, 1998

VOTE: 3-0 (Laura M. Richards and Susan Morgan Hinton to waive the rules and approve the modification of plans and conditions; Maybelle Taylor Bennett to waive and approve by absentee vote; Sheila Cross Reid not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: MAR 3 1 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE

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PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR § 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15831

As Director of the Board of Zoning Adjustment, I hereby certify and attest that on MAR 31 1998 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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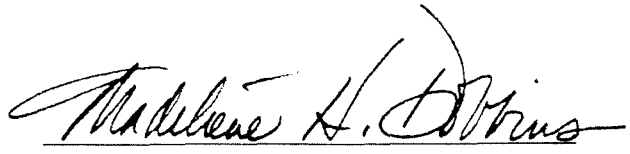
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MADELIENE H. DOBBINS
Director

DATE: MAR 31 1998